

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

ESTATE OF DOROTHY LYONS, by and )  
through its Administrator, Misheer Davail )  
Lyons; and ESTATE OF EUGENE )  
LYONS, by and through its Administrator, )  
Cedric Jamaal Lyons, )

Plaintiffs, )

v. )

CSX TRANSPORTATION, INC., )

Defendant. )

CASE NO. \_\_\_\_\_

NOTICE OF REMOVAL

TO: Judges in the United States District Court,  
Eastern District of North Carolina, Eastern Division

Defendant, CSX Transportation, Inc. ("CSXT"), hereby files this Notice of Removal and  
in support thereof shows the Court as follows:

1. On December 11, 2019, plaintiffs, Estate of Dorothy Lyons, by and through its  
Administrator, Misheer Davail Lyons; and Estate of Eugene Lyons, by and through its  
Administrator, Cedric Jamaal Lyons ("plaintiffs"), filed this action in the General Court of  
Justice, Superior Court Division, Edgecombe County, North Carolina, entitled ESTATE OF  
DOROTHY LYONS, by and through its Administrator, Misheer Davail Lyons; and ESTATE OF  
EUGENE LYONS, by and through its Administrator, Cedric Jamaal Lyons v. CSX  
TRANSPORTATION, INC.; CSX CORPORATION; TOWN OF WHITAKERS, NORTH  
CAROLINA; NASH COUNTY, NORTH CAROLINA; AND EDGECOMBE COUNTY,

NORTH CAROLINA, case no. 19-CVS-001042. A copy of plaintiff's Complaint is attached hereto as Exhibit "1."

2. Plaintiffs, in their Complaint, allege a cause of action under the North Carolina Wrongful Death Statute. Plaintiffs' cause of action arose when plaintiffs' decedents died following a collision with an Amtrak train at a railroad grade crossing in Whitakers, North Carolina. The Complaint seeks damages exceeding \$75,000, exclusive of interest and costs. (See Exhibit "1," ¶ 126)

3. On February 18, 2020, defendant, CSX Transportation, Inc. and CSX Corporation filed their Answer. A copy of this Answer is attached hereto as Exhibit "2".

4. On May 4, 2020, plaintiffs filed a Voluntary Dismissal Without Prejudice as to defendant CSX Corporation. A copy of the May 4, 2020 Voluntary Dismissal Without Prejudice is attached hereto as Exhibit "25".

5. On September 9, 2020, plaintiffs filed a Voluntary Dismissal Without Prejudice as to Defendants Nash County, North Carolina, and Edgecombe County, North Carolina, attached hereto as Exhibit "36," leaving CSX Transportation, Inc., and the Town of Whitakers, North Carolina, as the only remaining defendants.

6. On November 28, 2020 North Carolina Superior Court Judge Craig Croom signed an Order granting the Motion to Dismiss filed by defendant, Town of Whitakers, North Carolina. The Order dismissing defendant Town of Whitakers, North Carolina was filed in the Edgecombe County Superior Court clerk's office on November 30, 2020. That Order was first received by CSXT on December 2, 2020.

7. Upon information and belief, and as alleged in plaintiffs' Complaint, Dorothy Lyons and Eugene Lyons ("Decedents") were citizens and residents of Edgecombe County, North Carolina, until the time of their deaths on January 14, 2018. (See Exhibit "1," ¶ 1)

8. At the time of the commencement of this action in State court and at the time of the filing of this Notice of Removal, CSXT was and is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in the State of Florida. (See Exhibit "1," ¶ 4 and Exhibit 2, ¶ 4)

8. This Court now has original jurisdiction over this action under the provisions of 28 U.S.C. § 1332. This action is a civil action wherein the amount in controversy exceeds the sum or value of seventy-five thousand and no dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states. Thus, this action is one which may now be removed to this Court by CSXT pursuant to 28 U.S.C. § 1441.

9. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(3) because it is filed within thirty days of CSXT's receipt of the Edgecombe County Superior Court's Order dismissing the Town of Whitakers, North Carolina, from which it was first ascertainable that the case had become removable.

10. Further, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(c)(1) because it is filed within one year of commencement of the action.

11. Defendant has served notice of this removal on plaintiffs and the Clerk of the General Court of Justice, Superior Court Division, Edgecombe County, North Carolina, a copy of which is attached hereto as Exhibit "40."

12. Attached hereto as Exhibits 1 - 39 are true and legible copies of all process, pleadings, orders, and other documents that have been served in the state court proceeding

(excluding discovery), in accord with Rule 5.3(a)(1) of the Local Civil Rules for the United States District Court for the Eastern District of North Carolina. Also attached are the Notice of Removal to the State Court (Exhibit 40), the Civil Cover Sheet (Exhibit 41), Supplemental Cover Sheet (Exhibit 42), and the Disclosure of Corporate Affiliations (Exhibit 43).

WHEREFORE, defendant CSX Transportation, Inc. hereby removes the above-referenced action now pending against it in the General Court of Justice, Superior Court Division, Edgecombe County, North Carolina, to this Court.

Respectfully submitted, this the 3<sup>rd</sup> day of December, 2020.

MILLBERG GORDON STEWART PLLC

/s/ John C. Millberg

John C. Millberg, NC Bar No. 13229

Andrew B. Spradlin, NC Bar No. 51008

MILLBERG GORDON STEWART PLLC

1101 Haynes Street, Suite 104

Raleigh, NC 27604

Telephone: (919) 836-0090

Fax: (919) 836-8027

Email: [jmillberg@mgsattorneys.com](mailto:jmillberg@mgsattorneys.com)

Attorneys for Defendant CSX Transportation, Inc.,

CERTIFICATE OF SERVICE

It is hereby certified that on this date I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participating attorneys.

This the 3<sup>rd</sup> day of December, 2020.

/s/ John C. Millberg  
John C. Millberg  
1101 Haynes Street, Suite 104  
Raleigh, NC 27604  
*Attorney for defendant*

SERVED:

Robert H. Jessup (NC Bar No. 42945)  
B. Joan Davis (NC Bar No. 17379)  
PO Box 12347  
Raleigh NC 27605  
T: (919) 821-7700  
F: (919) 821-7703  
[rjessup@hsfh.com](mailto:rjessup@hsfh.com)  
*Attorneys for plaintiffs*